IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4390 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NISAR ABDUL HAMDI SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MR A.D.DAVE & Banna Datta for Petitioner

MR SJ DAVE, AGP for respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 15-4-2000 passed by the Police Commissioner, Surat City, and he has been declared

as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of publoic order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Learned counsel for the petitioner have restricted their arguments only on the point that there is delay in forwarding representation. As per the argument of learned counsel for the petitioner, the representation has been made by the petitioner to the authority on 24-4-2000 which was received by the State authority on 26-4-2000 and the order of detention has been approved by the State Government on 25-4-2000. Therefore, the representation has not been forwarded by the detaining authority within a reasonable time. So, there is delay in forwarding the representation by the detaining authority to the State authority for which learned counsel for the petitioner has relied upon a decision reported in upon a decision reported in 1994 (2) G.L.H. (U.J.) 10, Urmilaben Navnitlal Gandhi v. The Commissioner of Police, Surat City and others. wherein in it is held as under ;

"Further more, the Court noted that the detaining authority received the representation on 14th November 1993 and it rejected the same on 15th October 1993. The representation was forwarded to the State Government on 16th October, 1993. The office, however, forwarded it to the State Government on 19th/21st October 1993. The same was received on 26th October 1993 and rejected by the State Government on 27th October 1993. The delay of 5 days i.e. from 16th October to 21st October 1993 in forwarding the representation has not been explained by the respondents in any manner except that Shri Shelat for respondents has urged that one holiday intervened. The Court observed that the office of the detaining authority was not alive to the urgency of forwarding the representation to the State Government for its consideration on merits. Applying the ratio in Harish Pahava v. State of Uttar Pradesh, AIR 1981 SC 1126, wherein similar delay way held to be unreasonable, vitiating the continued detention of the detenu, the delay of five days on the part of the office of the Commissioner of Police, Surat City in forwarding

the representation against the detention of the detenu was thus unreasonable and not properly explained vitiating the continued detention of the detenu. "

4. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 15-4-2000 passed against the detenu is hereby quashed. The detenu Nisar Abdul Hamid Shaikh is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.Dholakia, J.)

*mithabhai